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TOKYO.

~~At~~ A-51, May 22, 1952.Subject: FCN Treaty informal discussions. Embassy despatch
No. 13, May 6.

In this, as the other instructions dealing with the memoranda of conversation, the Department is confining its comments largely to clarifications, authorizations and rectifications which appear called for, since there is no need for commenting upon matters which appear to be adequately in hand or else as yet insufficiently developed to warrant useful comment. The Department believes the Embassy staff in general conducted in a very creditable manner the discussions recorded in the enclosures to the present despatch.

Enclosure 1 (eleventh meeting)

Article XIV. Mr. Adam's argument (pp. 1-2) with reference to qualitative standards is interesting and ingenious. However, if the subject arises again the Department would hardly go so far as to say that differential qualitative export regulations are necessarily entirely beyond the ken of paras. 1 and 2, as such regulations could conceivably be used as a cloak to cover real export discrimination.

Enclosure 2 (twelfth meeting)

Article XIV (continued). At this time the Department will forward only preliminary comments about the Japanese proposal for a balance of payments protocol (as reproduced top page 2). At the outset, it should be noted that the arrangement in the protocol of the Israel Treaty is not relevant to the present case insofar as Article XIII is concerned. In the Israel Treaty, there was a most-favored-nation treatment clause which does not appear in the draft under discussion at Tokyo. Paragraph 2 of the one is conspicuously different from para. 2 of the other. The most-favored-nation clause such as found in the Israel Treaty, has now been abandoned since it was unsatisfactory in the case of countries having present or prospective dollar problems (most countries). In its stead there has been

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Tokyo,
A-51, May 22, 1952.

developed the more realistic and adequate provision reflected in the current "standard" version. The absence of the most-favored-nation clause obviates the need for the sort of reservation which proved necessary for Israel. The entire article is now so drafted that it already contains within itself all reservations and qualifications that are necessary or appropriate. There is, therefore, simply no reason for subjecting Article XII to further qualifications, which perforce would be either redundant or mischievous. It is worthy of note that the three 1951 treaties containing exchange control articles based on the current "standard" model, do not have anything like the Japanese suggestion in them -- but only the Israeli Treaty which had an earlier, and now superseded, version of the exchange control article.

(By way of footnote, applicable here as well as to subject matter discussed in the tenth meeting, it is noted that there is no question over the most-favored-nation clause of para. 1 of the exchange control article. This is logical, of course, since para. 1 deals with the rights of access of persons to such exchange as may be ~~made~~ available ~~under the exchange regulations~~, and not with the basic regulation of exchange and international balance-of-payments ~~as such~~.)

On the other hand, there is good reason for considering a balance-of-payments reservation as to paras. 2 and 3(b) of Article XIV. The Department, therefore, will plan to send its counterproposals in a later airgram.

Article XIV, para. 4. Regarding the discussion about measures which might be taken in connection with the conservation of exhaustible national resources, the Department might add the following observations: Specific clauses of exception for such measures were called for in the ITO Charter and GATT because those instruments aimed at absolute goals in the field of import and export embargoes and restrictions. The Treaty's goal is the more modest one, however, of merely curbing discrimination. The Treaty, that is, allows each party full latitude to establish any import-export restrictions it likes, for any reason it pleases, so long as there is no discrimination in the effectuation thereof. The exceptions in the Treaty relative to international trade, therefore, need be concerned only with permissible departures from the rule of non-discrimination.

Department's reply to reference despatch will be continued in a separate airgram.

Acheson

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